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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,757	11/06/2001	Keith Homer Baker	7836XD2	7035

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,757

Applicant(s)

BAKER ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-32, 35-39, 41-53 and 74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-14, 20-29, 31, 32, 35-38, 41-44, 46, 47, 51-53 and 74 is/are rejected.
- 7) ☒ Claim(s) 7-8, 16-19, 30, 39, 45 and 48-50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1 This action is responsive to the appeal brief filed on June 11 2003.

2 Upon further review and consideration the prosecution is reopened. Exparte prosecution
is resumed.

NEW GROUND OF REJECTION

Claim Rejections - 35 USC § 102

3 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-10, 12-14, 20, 24, 26, 29, 35, 37-38, 42-44, 47 and 51 are rejected under 35
U.S.C. 102(b) as being anticipated by Buzzaccarini (US 4,767,563).

de Buzzaccarini (US' 563), teaches a liquid cleaning composition comprising cleaning
agents such as nonionic surfactants and calcium/magnesium removal agents such as
polyacrylates as benefit agents as claimed in claims 1-5, 9-10, 12-13, 43-44 and 51 (see col. 3,
lines 60-64 and col. 4, line 49), conditioning agents such as alkylated polysaccharides (polymers)
to increase the stability and performance characteristics of the composition as claimed in claims
14 and 42 (see col. 5, line 11), limonene as a disinfecting agent as claimed in claim 29 (see col.
3, lines 12-13), soil suspending agents as claimed in claim 35 (see col. 4, lines 59-60), water-
soluble phosphates as claimed in claim 37 (see col. 4, line 22-24), alkaline pH modifiers such as
sodium hydroxide as claimed in claim 38 (see col. 5, lines 16-18). The composition is formulated
in a liquid form as claimed in claim 47 and having an alkaline pH range of 10-10.8 which is

within the claimed range as claimed in claims 20 and 26 (see col. 5, line 17), and alkaline pH of 8 which falls in the upper limit of the claimed range as claimed in claim 24 (see col. 5, line 16).

de Buzzaccarini teaches all the limitations of the instant claims. Hence, de Buzzaccarini anticipates the claims.

4 Claims 1-3, 9-10, 14, 29, 31-32 (amended), 36 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitamura et al. (US 5,306,444).

Kitamura (US' 444) teaches a detergent composition for shoes and shoes polish as claimed in claims 1 and 51(see col. 3, lines 5-9). The composition comprises benefit agents such as washing ingredients as claimed in claim 2 (see col. 2, lines 51-68), surfactants such as anionic and nonionic surfactants as claimed in claims 3 and 9-10 (see col. 5, lines 40-41), conditioning agents such as oils as claimed in claim 14 (see col. 5, line 45), sterilizers (disinfecting agents) such as phenol as claimed in claim 29 (see col. 8, lines 16), benzalkonium chloride and chlorohexidene as claimed in claims 31 and 32 (see col. 8, lines 13-16), protease enzymes as claimed in claim 36 (see col. 3, lines 27-30). The cleaning composition may be in any desired form such as liquid as claimed in claim 47 (see col. 8, lines 35-39). Kitamura teaches all the limitations of the instant claims. Hence, Kitamura anticipates the claims.

5 Claims 1-5, 9-10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Soldanski et al. (US 5,431,840).

Soldanski (US' 840) teaches a cleaning composition for leather shoes (see col. 1, lines 49-51). The composition comprises more benefit agents such as cleaning agents as claimed in claims 1 and 2 (see col. 2, line 6), calcium/magnesium removal agents such as polyacrylates as claimed in claim 3-5 (see col. 4, line 12), nonionic surfactants as claimed in claims 9-10 and 12-

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13 (see col. 4, lines 17-30) and wax as a conditioning agent as claimed in claim 14 (see col. 4, line 33). Soldanski teaches all the limitations of the instant claims. Hence, Soldanski anticipates the claims.

6 Claims 1-3, 9-10 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Nguyen et al. (US 5,482,644).

Nguyen (US' 644) teaches detergent composition for cleaning leather and athletic shoes as claimed in claims 51-52 (see col. 3, lines 28-33). The composition comprises a benefit agent (cleaning agent) such as anionic surfactant of coconut oil soap as claimed in claims 2-3 and 9-10 (see col. 3, Example I). Nguyen teaches all the limitations of the instant claims. Hence, Nguyen anticipates the claims.

Claim Rejections - 35 USC § 103

7 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 11, 21-23, 25, 27-28, 41 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Buzzaccarini (US 4,767,563).

de Buzzaccarini (US' 563), teaches a liquid cleaning composition for providing excellent cleaning characteristics on grease /oily soils. The cleaning composition comprises more benefits agents such as calcium/magnesium removal agents of polyacrylates as claimed in claim 6 (see col. 4, line 49) nonionic ethoxylate surfactants of fatty acids having C₁₄₋₁₅ ethoxylates (7EO) as claimed in claim 11(see col. 7, Example XVI), perfumes as claimed in claim 41(see col. 2, line

64),. The composition has an alkaline pH range of 8 to 11, which is overlapped with the claimed ranges as claimed in claims 21-23 and 26-28 and close to the range as claimed in claim 25 (see col. 5, line 16).

The instant claims differ from the reference by disclosing optimal amount of molecular weight of calcium/magnesium removal agents (claim 6), the claimed percentage of nonionic surfactant (claim 11) and use of the composition for treating shoe (claim 74).

However, the reference teaches a cleaning composition comprising benefit agents such as perfume in the amount of 1% and ethoxylate nonionic surfactants in the amount of 0.7% (see col. 7, Example XVI) and teaches the use of composition for treating hard surfaces.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by optimizing the amounts of the benefit agents such as perfumes and ethoxylate nonionic surfactant in the cleaning composition with a reasonable expectation of success because the reference suggests the use of benefit agents of perfumes and ethoxylate nonionic surfactant in the cleaning composition, and, thus, a person of the ordinary skill in the art would be motivated to optimize the amount of these ingredients so as to get the maximum effective amounts, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by incorporating the benefit agent of calcium/magnesium removal agent such as polyacrylates having an average molecular weight of less than 100,000 with a reasonable expectation of success, and, thus, a person of the

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ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent, unexpected results.

With respect to claims 11 and 25, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition because the reference teaches a cleaning composition comprising nonionic ethoxylate surfactants of fatty acids having C₁₄₋₁₅ ethoxylates (7EO) in the amount of 0.7% (see col. 7, Example XVI), wherein the composition has a pH in the range of 8-11 (see col. 5, line 14) wherein these benefit agents have ranges that are very close to the claimed ranges as claimed in claims 11 and 25 and, therefore, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed Cir. 1985). See MPEP 2144.051.

With respect to claim 74, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use similar composition for treating shoes because similar compositions would be expected to have similar properties, absent unexpected results.

8 Claims 46 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al. (US 5,306,444).

The disclosure of Kitamura (US' 444) is summarized above. The reference does not teach a composition for treating shoes comprise canvas, nylon, synthetic leather and/or natural leather-containing surface that it is essentially free of bleach and wherein the composition is in the form of a gel as claimed.

However, the reference teaches and discloses treating shoes and leather with the disclosed composition (see col. 3, lines 6-9), wherein the composition may be formulated in any desired form (see col. 8, lines 35-39).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to use such a composition for cleaning leather shoes because the reference teaches a composition for treating shoes and leather (see col. 3, lines 8-9), wherein the composition may be in any desired form (see col. 8, lines 35-39) includes the gel form for cleaning and treating any shoes made of leather and, thus, a person of the ordinary skill in the art would expect such a cleaning composition to have similar properties to those claimed, absent unexpected results.

9 Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soldanski et al. (US 5,431,840).

Soldanski (US' 840) teaches a cleaning composition for leather shoes. The composition comprises more benefit agents such as nonionic surfactants having C₁₂₋₁₄ fatty alcohol ethoxylates (4EO) in the amount of in the amount of 2 to 6% by weight (see col. 4, line 30).

The instant claims differ from the reference by reciting a cleaning composition comprising nonionic surfactants having C₈ to C₁₈ alkyl ethoxylates with the claimed average degree of ethoxylation moles of 5 to about 15 moles of ethylene oxide (EO).

However, the reference teaches a detergent for cleaning and treating leather shoes (see col. 1, lines 49-53), wherein the composition comprises C_{12/14} fatty alcohol ethoxylate having 4 ethoxylate units (EO) (see col. 4, line 30).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a treating and cleaning composition by incorporating nonionic surfactants having C8 to C18 alkyl ethoxylates with an average degree of ethoxylation from about 5 to about 15 moles of ethylene oxide, because the reference teaches a composition comprising ethoxylate units (4EO) (see col.4, line 30), in a number close to the lower number of the alkyl ethoxylates (5EO) of the claimed compounds. Therefore, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, *see Titanium Metals Corp. Of America v. Banner*, 778F.2d 775, 227 USPQ 773 (Fed Cir. 1985). See MPEP 2144.051.

Allowable Subject Matter

10 Claims 7-8, 16-19, 30, 39, 45 and 48-50 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record do not teach, disclose or suggest treating or cleaning compositions comprising benefit agents having the limitations as those recited in the above claims.

Response to Applicant's Arguments

Applicant's arguments, see Appeal Brief, filed 6/11/2003, with respect to the rejection(s) of claim(s) 7, 16-19, 30, 39, 45 and 48-50 under (US 4,767,563), have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elhilo
August 21, 2003



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